

DIVISION I

JOSEPHINE LINKER HART, Judge
ARKANSAS COURT OF APPEALS
NOT DESIGNATED FOR PUBLICATION

CA06-715

January 31, 2007

BRANDI KENDRICK and
GREG KENDRICK

APPELLANTS

V.

ARKANSAS DEPARTMENT OF
HUMAN SERVICES

APPEAL FROM THE POPE COUNTY
CIRCUIT COURT
[NO. JV-2004-253]

HON. KENNETH COKER,
CIRCUIT JUDGE

AFFIRMED

APPELLEE

Brandi Kendrick and Greg Kendrick appeal from an order of the Pope County Circuit Court terminating their parental rights to A.K., who at the time of the termination hearing was four years old. On appeal, the Kendricks argue that the evidence was insufficient to support the trial court's judgment terminating their parental rights. We affirm.

The Kendricks have a long history of involvement with the Arkansas Department of Human Services (ADHS), beginning in November 1999, which was before A.K. was born. Prior to this case, Brandi Kendrick's older two children had been removed from her custody and placed with their maternal grandmother. At least four reports of child neglect involving A.K. were investigated and found true and two protective services cases were opened, prior to the case at bar. In this case, ADHS filed a dependency-neglect petition on September 24,

2004, which alleged that A.K. was “dirty and wears the same clothes for 2 or 3 days,” the child and the family “stink very bad,” the parents were using A.K. to help them beg for money, and A.K. was being left with “an old man who lives with them.” The affidavit also indicated that the Kendricks showed a significant lack of judgment in handling their finances in that they were using their SSI check to buy cars, which they usually do not license, instead of food.

Pursuant to the dependent/neglect finding, the Kendricks were given a case plan that required them to “maintain a clean home to include discarding trash and old food, cleaning dishes daily, and making full effort to maintain a pest & bug free environment.” It also mandated that they attend and complete parenting classes and demonstrate improved parenting skills. They were required to submit to psychological evaluations and follow the recommendations that flowed from these evaluations. Finally, they were required to obtain and maintain suitable housing and attend visitation with A.K. Later, the case plan was expanded to require the Kendricks to participate in Intensive Family Services, stop smoking and not allow anyone to smoke in the home, be assessed for DDS services and “utilize the services offered by DDS,” and have at least one parent obtain gainful employment.

On October 10, 2005, ADHS petitioned to terminate the Kendricks’ parental rights. The petition alleged that the Kendricks had failed to rehabilitate their home and correct the conditions that caused the removal of A.K. from their custody. It also alleged that subsequent to taking A.K. into ADHS custody, other factors or issues have arisen that demonstrated that

the return of the child was contrary to the juvenile's health, safety, or welfare, and that the Kendricks had willfully failed to support A.K. while she was in ADHS custody.

The trial court terminated the Kendricks' parental rights to A.K., finding that the Kendricks had failed to correct the conditions that caused the removal of the child and that subsequent to the filing of the original dependency/neglect petition, other factors or issues arose that demonstrated that the return of the child was contrary to her health, safety, or welfare. The trial court stated that A.K. had been placed in ADHS custody "based on environmental neglect and neglect of the child's hygiene" and that "none of the problems had been corrected by the parents." It found that despite having moved into a new home, "there continues to be old cooked food in grease sitting on the stove sometimes with bugs crawling over it," and despite the fact the home was roach-free when they moved in, and was sprayed by an exterminator on a monthly basis, there was still evidence of roach infestation. The trial court also found that the parents continued to smoke in the home after having been ordered to quit because A.K. suffers from chronic ear and sinus problems. Further, Brandi was "sporadic" in her attendance at counseling despite the fact that the sessions were held only a block and a half from her residence. It also found that Brandi's psychological disorder rendered her unlikely to cooperate with the "support system" that the parents would need to adequately care for their child, the parents' hygiene continued to be "poor 90% of the time," and the parents showed "no evidence" of being able to apply what they learned from parenting classes. Finally, it found that neither parent had obtained gainful employment, and it was

“very apparent that [the] parents are unable to perform the most basic necessities for themselves or their child, such as shop for their own groceries and manage their money.”

On appeal the Kendricks challenge the sufficiency of the evidence to terminate their parental rights. They argue that the trial court erred in meting out such an “extreme remedy,” because they made “substantial progress toward completing their compliance with the orders of the Court and with the case plan,” and because they had made “such substantial progress and no testimony was given to prove that future progress would not be forthcoming.” The Kendricks assert that the trial court did not give “proper attention” to their “accomplishment,” noting that they attended almost every scheduled visit and behaved appropriately during the visits, maintained their home in a much more sanitary condition, attended parenting classes, followed the requirements of their lease, and “cooperated with DDS services as far as they could.” We find this argument unpersuasive.

Termination of parental rights cases are reviewed de novo. *Dinkins v. Arkansas Dep’t of Human Servs.*, 344 Ark. 207, 40 S.W.3d 286 (2001). We review the factual basis for terminating parental rights under a clearly erroneous standard. *Baker v. Arkansas Dep’t of Human Servs.*, 340 Ark. 42, 8 S.W.3d 499 (2000). Clear and convincing evidence is that degree of proof which will produce in the factfinder a firm conviction regarding the allegation sought to be established. *Id.* In resolving the clearly erroneous question, we must give due regard to the opportunity of the trial court to judge the credibility of witnesses. Additionally, we have noted that in matters involving the welfare of young children, we will give great weight to the trial judge's personal observations. *Id.* However, with regard to errors of law,

no deference is given to the trial court's decision. *See Sanford v. Sanford*, 355 Ark. 274, 137 S.W.3d 391 (2003).

We hold that there is sufficient evidence to affirm the trial court's termination of the Kendricks' parental rights. While there was evidence that the Kendricks had made some effort to improve the cleanliness of their home, there was testimony from social-service aid Melody Mayo, CASA volunteer Marsha Wells, and ADHS caseworker Kelly Braton that, despite the fact that neither parent had full-time employment outside the home, the cleanliness problems persisted in the residence. Furthermore, despite the fact that the home was roach-free when the Kendricks moved in and was sprayed monthly for the pests, roaches continued to be evident. Accordingly, we cannot say that the trial court erred in finding that the Kendricks had failed to correct the conditions that caused the removal of A.K. from the home.

We also hold that the trial court did not err in finding sufficient evidence that the Kendricks had not sufficiently complied with the case plan. There was testimony from Mayo, Wells, and Braton that there continued to be evidence that the Kendricks were at least allowing smoking in their home and that the performance criteria for home cleanliness had not been met. Brandi herself admitted that her attendance at counseling was sporadic, despite the fact that the counseling center was located only a block and a half from her home and she was not employed. Our supreme court has determined that failure to comply with an ADHS case plan, however onerous, is sufficient grounds for termination of parental rights. *Jones v. Arkansas Dep't of Human Servs.*, 361 Ark. 164, 205 S.W.3d 778 (2005) (affirming the termination of parental rights where an obese appellant failed to stick to her diet). Finally,

contrary to the Kendricks' assertion, the trial court, and this court on appeal, are not required to give special weight to the parts of the case plan that they did achieve; partial compliance is not a basis for reversing a termination of parental rights. *Chase v. Arkansas Dep't of Human Servs.*, 86 Ark. App. 237, 184 S.W.3d 453 (2004).

Affirmed.

MARSHALL and HEFFLEY, JJ., agree.